

**FILED**

**MAR 14 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SINUE ROBERTO MORAN,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-75470

Agency No. A41-346-912

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Sinue Roberto Moran, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider the BIA's denial of his motion to reopen removal proceedings. We

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, and we review de novo due process claims. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002).

The BIA did not abuse its discretion in denying Moran's motion to reconsider because Moran identified no error of law or fact in the BIA's prior determination that his new evidence did not demonstrate *prima facie* eligibility for relief. *See* 8 C.F.R. § 1003.2(b)(1); *Iturribarria v. INS*, 321 F.3d 889, 895 (9th Cir. 2003) (a motion to reconsider must specify the errors of fact or law in the agency's prior decision). The BIA properly rejected Moran's contention that it failed to consider all the evidence he presented with his motion to reopen. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (holding that absent evidence to the contrary, the BIA is presumed to have considered all the evidence).

Because Moran sought to introduce new evidence in his motion to reconsider, the BIA also construed the motion as a second motion to reopen. The BIA did not abuse its discretion in denying Moran's second motion to reopen, because it was numerically barred, and did not meet any of the statutory exceptions. *See* 8 C.F.R. § 1003.2(c)(2)&(3). Thus, Moran's contention that the BIA denied him due process by failing to consider the evidence he presented fails.

*See Lata v. INS*, 204 F.3d 1242, 1246 (9th Cir. 2000) (holding that an alien must show error to prevail on a due process challenge).

**PETITION FOR REVIEW DENIED.**